Court No. 2

In The High Court of Uttaranchal at Nainital.

Appeal From Order No. 868 of 2001.

(1)Smt. Jiwanit Devi W/o of late Shri Ram Dutt,
(2)Km.Sunita Joshi D/o of late Shri Ram Dutt,
(3)Km. Kamla Joshi D/o of late Shri Ram Dutt,
(4) Santosh Joshi S/o Late Shri Ram Dutt,
(5)Hem Chandra Joshi S/o of late Shri Ram Dutt,
All residents of Village-Hanera, Post and Tehsil-Gangolihat, District-Pithoragarh.

..... Claimants/Appellants

Versus

(1)U.P. State Roadways Transport Corporation,
through its Regional Manager, Tanakpur,
District Champawat.
(2)Shri Dan Singh Dasila, owner of Bus No. UGP-4733
R/o Village-and Post Rugeri, Patwari Circle
Devradi Pattal, Tehsil-Gangolihat,
District-Pithoragarh,
(3)National Insurance Company Ltd.,
through its Branch Manager,
Branch Office-Haldwani, District-Nainital.

.....Opp.party/Respondents.

Sri Rajendra Dobhal, learned counsel for appellants,
Sri A.N. Sharma, learned counsel for the U.P.S.R.T.C.

Dated: 20st Aug. 2004.

Hon. P. C. Verma, J.
Hon'ble B.S. Verma, J.

These appeals have been filed the claimants under Section 173 of the Motor Vehicle Act, 1988 for enhancement of the amount of compensation against the award dated 31.3.2001 made by District Judge/Motor Accident Clams Tribunal, Pithoragarh (hereinafter referred to as the Tribunal) in Motor Accident Claim Case No. 148 of

Brief facts giving rise to this appeal are that on 27.1.1988 deceased was going for Pithoragarh to Gangolihat by Bus No. UP 02-4075 belonging to U.P.S.R.T.C. At 07.15 a.m. when the bus reached on the way at Chamundgara the aforesaid Bus and bus No. UGP-4733 owned by Opp.party No.2 collided with each other due to rash and negligent driving of their drivers. On account of this collision the Bus of U.P.S.R.T.C. fell into Khud, due to which deceased Ram Dutt Joshi and four-five other persons died on the spot. The deceased was posted on the post of Senior Station Incharge in U.P.S.R.T.C. at Pithoragarh and was drawing monthly salary of Rs. 6,415.00 at the time of accident. His date of birth was 20.01.1950. The claimants who are dependents of deceased filed the claim petition for compensation of Rs. 12,24,000.00 due to death of Sri Ram Dutt Joshi.

The opposite parties contested the denying the allegations leveled against the before the Tribunal. On the pleading of the parties the following issue were framed by the learned Tribunal:-

(1) Whether the alleged accident occurred due to rash and negligent driving of driving of Bus No. UP-02-4075 belonging to U.P.S.R.T.C. or due to rash and negligent driving of driver of Bus No. UGP 4733 or due to their contributory negligence?

(2) *Whether the petitioners are entitled to get compensation? If so, to what amount and from which of the Opposite Party?*

The learned Tribunal decided the issues in favour of the claimants and held that the accident was occurred due to the contributory negligence of the driver of bus No. UP 02-4075 of U.P.S.R.T.C. and driver of Bus No. UGP 4733 owned by Opp. Party No.2 and rated their

negligence at 70% and 30% respectively. The Tribunal allowed the petition for a total sum of Rs. 1,94,200/- and order that out of this amount Rs 1,31,200/- shall be paid by Opp. party No.1 and Rs. 62,800/- shall be paid by Opp. party Nos. 1 & 2 jointly and severally alongwith interest at the rate of 8% per annum from the date of petition till the date of payment.

The appeal has been pressed on only one ground that the age of the deceased was admittedly 48 years and the Tribunal has applied the multiplier of '9' while the multiplier ought to have been applied of '13' as per second Schedule appended to Section 163-A of the Motor Vehicles Act, 1988, We find force in contention of the learned counsel for the appellants. Therefore, we allow the appeal partly and direct the Tribunal concerned to correct the multiplier as applicable in the present case according to Schedule. The Tribunal shall consider only this aspects while deciding the matter afresh. Rests of the findings are confirmed. The Tribunal concerned shall dispose of the matter within a period of two months from the date of production of certified copy of this order by the claimants/appellants after issuing notice to the opposite parties.

(B. S. Verma, J.) **(P.C. Verma, J.)**

P.Singh